U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34867782

Date: NOV. 4, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a tax lawyer, requests classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document their achievements in their fields. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met one of ten initial evidentiary requirements – two less than needed for a final merits determination. On appeal, the Petitioner contends that he also satisfied evidentiary criteria regarding:

- His membership in associations requiring outstanding achievements of their members;
- Published material about him and his work in his field;
- His original contributions of major significance in the field; and
- His performance in leading or critical roles for organizations with distinguished reputations.

8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), (viii).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he met the evidentiary criteria regarding published material about him and original contributions of major significance. We will therefore withdraw the Director's decision and remand the matter for a final merits determination consistent with the following analysis.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Evidence of extraordinary ability must initially demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).[1] If a petitioner meets either standard, U.S. Citizenship and Immigration Services (USCIS) must then make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. Facts and Procedural History

The record shows that the Petitioner, an Argentinian native and citizen, earned a law degree in his home country in 1998. The following year, he established his own firm, specializing in tax law. Argentinian universities later awarded him a specialization in financial and tax law and a postgraduate degree in tax law.

Since coming to the United States in 2021, the Petitioner has completed additional studies. Earlier this year, a U.S. university awarded him a master's degree in American and transnational law. The Petitioner states that he eventually wants to establish his own tax law firm in the United States.

The record supports the Director's findings that the Petitioner demonstrated his intent to continue working in his field in the United States and that his U.S. immigration would substantially benefit the country. *See* Section 203(b)(1)(A)(ii), (iii) of the Act. But he still must establish his purported extraordinary ability in his field. *See* section 203(b)(1)(A)(i) of the Act.

The Petitioner does not claim – nor does the record indicate – his receipt of a major internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). Thus, to establish extraordinary ability, he must meet at least three of the ten initial evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).

Evidence supports the Director's finding that the Petitioner met the evidentiary requirement regarding his participation as a judge of others' work in his field. *See* 8 C.F.R. § 204.5(h)(3)(iv). We will now review the additional evidentiary criteria he claims to have met. The Petitioner's evidence must objectively satisfy the parameters of the applicable regulatory description. *See* 6 *USCIS Policy Manual* F.(2)(B).

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

B. Published Material About the Petitioner

This criterion requires "[p]ublished material about the [noncitizen] in professional or major trade publications or other major media, relating to [their] work in the field for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iii). "Such evidence shall include the title, date, and author of the material, and any necessary translation." *Id.*

When adjudicating this requirement, USCIS first determines whether published material relates to a petitioner and their specific work in their field. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). If so, the Agency then determines whether a publication qualifies as a professional or major trade publication, or other major media. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). When evaluating publications and media, relevant factors include: for professional and major trade publications, the intended audience; and, for major trade publications and other major media, the relative circulation, readership, or viewership. *Id.*

The Petitioner submitted authenticated copies of newspaper articles about court cases he handled. He also provided evidence that a court in the Argentinian province where he lived posted decisions on a judicial website, including 55 of his cases. The Director, however, found insufficient evidence that the materials related to the Petitioner's work in the tax law field or that the publications qualify as professional or major trade publications or other major media.

On appeal, the Petitioner first contends that the Director erred in stating that "the Petitioner failed to submit evidence showing that materials have been published about [him] relating to [his] work in the field of tax law as a whole." To meet this criterion, published material must mention a petitioner and substantially discuss their work in their field. *See* 6 *USCIS Policy Manual* F.(2)(B)(1) ("[P]ublished material that . . . includes a substantial discussion of the person's work in the field and mentions [them] in connection to the work may be considered material about [them] relating to [their] work.")

A copy of a list of the Petitioner's cases published on the judicial website does not meet the criterion. Contrary to USCIS policy, the published material excludes the cases' written decisions and thus does not mention him. But he provided copies of decisions of two of the listed cases. The two decisions mention the Petitioner and discuss arguments that he made in those tax-related cases. Thus, contrary to the Director's finding, we find that these two publications mention him and relate to his work in the tax law field.

Also, as the Petitioner argues, a preponderance of the evidence identifies the provincial, judicial website as a professional publication. Under this criterion, qualifying media include "[p]rofessional or major *online publications* regarding the person and the person's work." 6 *USCIS Policy Manual* F.(2)(B)(1) (emphasis added). "[P]rofessional and trade journals are read by those of particular skill in particular professions or trades and are less commonly read by the populace at large." *Braga v. Poulos*, No. CV 06-5105 SJO (FMOx), 2007 WL 9229758, *6 (C.D. Cal. July 6, 2007), *aff'd*, 317 Fed.Appx. 680 (9th Cir. Mar. 9, 2009). The record shows that a court selected the cases published on the judicial website based on their legal importance and that legal professionals, rather than "the populace at large," primarily viewed them. Thus, the judicial website qualifies as a professional publication.

Consistent with 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner provided published material about himself in a professional online publication, relating to his work in his field. We will therefore withdraw the Director's contrary finding.

C. Original Contributions of Major Significance

To meet this requirement, a petitioner must submit "[e]vidence of the [noncitizen]'s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v).

USCIS first determines whether a petitioner has made original contributions in their field. *See* 6 *USCIS Policy Manual* F.(2)(B)(1). If so, the Agency then considers whether those contributions have major significance in the field. *Id.*

The Petitioner submitted copies of newspaper articles and letters from others in his field. The materials indicate that his work as a tax lawyer resulted in repeals of, and changes to, tax regulations. The Director, however, found insufficient evidence that these original contributions had major significance in his field. The Director stated:

> While the evidence shows that the Petitioner is a professional in the tax field and has made original contributions to [his] [p]rovince . . ., the record does not establish that [his] work had a remarkable impact or influence in the field of tax law as a whole. . . . The submitted evidence does not demonstrate that [his work] ha[s] provoked a level of commentary or generated a degree of attention that meets the major significance threshold.

The Petitioner argues that the Director overlooked evidence of his work's significance. He states that he "filed tax claims that no one presented before and after the judges considered the evidence and the situation, they ruled in favor of the taxpayers giving a new vision of the law of tax and the rights of taxpayers." He states that "a case must be really important for the deputies to decide to vote to modify the tax rule."[2]

Contrary to the Director's finding, the record contains evidence that the Petitioner's work had significance beyond his province. Newspaper articles about his work indicate the national scope of one of the repealed tax regulations. Also, a letter from a former deputy states that, after the Petitioner won the case regarding the regulation, the pair traveled to other Argentinian provinces to encourage other taxpayers to contest the regulation. Further, as the Petitioner argues, the case – the first of its kind brought in Argentina – provided guidance to judges and attorneys around the country. Also, the record shows that the regulation's repeal, which required businesses to buy special equipment to file their tax returns, came during a time of financial crisis for many Argentinian businesses.

For the foregoing reasons, the Petitioner sufficiently provided evidence of original contributions of major significance in his field. We will therefore withdraw the Director's contrary finding.

[2] The record shows that, similar to Congresspeople in the U.S. House of Representatives, deputies in Argentina represent constituents in that country's lower congressional house.

E. Remaining Issues

The Petitioner has met the required amount of evidentiary criteria. *See* 8 C.F.R. § 204.5(h)(3) (requiring a petitioner to meet at least three initial evidentiary requirements). We therefore reserve consideration of his arguments as to the criteria regarding membership in associations and performance in a leading or critical role. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

USCIS must now make a final merits determination on the petition. The Director did not make this finding. Rather than make such a determination in the first instance, we will remand the matter.

On remand, the Director must determine whether the Petitioner has sustained national or international acclaim and whether his achievements have been recognized in his field, identifying him as one of that small percentage who has risen to the field's very top. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(2). The Director should consider any potentially relevant evidence of record, even it does not fit one of the regulatory criteria or is not comparable evidence. *Id.* The petition's approval or denial should stem from the evidence's type and quality. *Id.* The Petitioner bears the burden of explaining the evidence's significance, and how it demonstrates his possession of sustained national or international acclaim and recognition in his field. *Id.*

III. CONCLUSION

The Petitioner submitted evidence of published material about himself and his original contributions of major significance in his field. USCIS must now make a final merits determination on the petition.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.